

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

Long Island Federal Courthouse
760 Federal Plaza
Central Islip, New York 11722-4437
(631) 712-5690

**CHAMBERS RULES OF
THE HONORABLE DOROTHY EISENBERG**
(effective as of May 6, 2002)

The following procedural rules apply to all matters now or hereafter pending before Judge Eisensberg and shall become effective on May 6, 2002. The E.D.N.Y. Local Bankruptcy Rules also apply to all proceedings before Judge Eisenberg, except to the extent that any is inconsistent with these Chambers Rules. Parties are expected to be familiar with the Rules and to comply with them; they are intended to facilitate the administration of matters coming before the Court. *Failure to comply with these Chambers Rules or other applicable legal requirements may result in the rejection of papers, the denial of relief, or other appropriate sanctions.*

Chambers Rules are subject to change and may, for cause, be varied or waived by the Court. Copies of the Rules, as updated from time to time, are available in the Clerk's Office at all locations of the United States Bankruptcy Court for the Eastern District of New York. The Rules are also available at our website at www.nyeb.uscourts.gov.

MOTION PRACTICE: NOTICE AND HEARING PROCEDURES

I. HEARINGS.

A. Calendars.

Regular motion calendars are held on most Tuesdays and Thursdays at 10:00 a.m. for all cases. Mondays, Wednesdays and Fridays are reserved for trials and evidentiary hearings. Status conferences and pre-trial conferences are scheduled for certain Tuesday or Thursday afternoons, as the Court's caseload dictates.

B. Scheduling.

- 1. Chapter 7 and 13 Cases.** Motions may be scheduled by calling (631) 712-6278. A message is recorded which will advise (a) procedures to follow when filing a Notice of Presentment to Vacate Stay in cases under Chapters 7 and 13, and (b) available dates and times for motions to be scheduled, and the last dates for filing motions with the Clerk's office in order to ensure the return date. PLEASE NOTE THAT this recording will be updated weekly. If you need to schedule a matter for a particular date and time, you can call the Courtroom

Deputy, Ms. Donna Tenga, at (631) 712-6278 on Mondays, Wednesdays and Fridays from 9:00 a.m. to 3:30 p.m. In the event a movant anticipates that a hearing will require an extended period of time or requires evidence to be presented, the movant must schedule the matter directly with the Courtroom Deputy, Ms. Tenga, for an appropriate date and time.

2. **Chapter 11 Cases.** Motions may be scheduled only by calling the Courtroom Deputy, Ms. Tenga, at (631) 712-6278, in advance.
3. **Filing Deadlines.** All motions must be filed with the Court at least 10 days before the scheduled return date.

C. Appearances.

1. **Regular Motions.** The movant and any party in opposition must appear in person or be represented by an attorney on the date of the scheduled hearing (or any adjourned date) unless, upon request made prior to the hearing, the Court excuses the party's appearance. An unexcused failure to appear may result in denial of the relief requested or in the matter being marked off the calendar, in which event it may be restored for cause shown, upon written application to the Court on notice to all relevant parties.
 - a. **Oral Argument.** Oral argument is required with respect to all motions as to which hearings are calendared.
 - b. **Appearances by Telephone.** Parties may appear by telephone if they make such request to Chambers at least 2 days prior to the hearing date to obtain a time to call and make arrangements with Conference Call Service (1-888-527-7327). Because of the change in time of the hearing, the party who wishes to appear by telephone is responsible for notifying the Court and all other necessary parties to advise them of the change of time and to obtain their consent. If the party wishing to appear by phone is unable to obtain the consent of the other parties to change the time of the hearing, this option cannot be utilized and party must appear in person.
 - c. **Withdrawal of Scheduled Motions.** If a matter scheduled on the calendar has been settled or is being withdrawn, the movant must confirm the removal of the matter from the calendar by contacting the Courtroom Deputy, Ms. Tenga, either (i) in writing (in sufficient time so as to be received prior to the hearing), or (ii) by telephone (at least one day prior to the hearing) and in writing immediately thereafter.
2. **Chapter 7 Trustee Motions to Dismiss.** The Court does not require a Chapter 7 trustee to appear in connection with a motion to dismiss a case for failure of a debtor to appear at a Section 341 meeting of creditors, unless the case was previously converted from Chapter 11.

3. **Chapter 13 Confirmation Hearings.** The Court will excuse a debtor (who is represented by counsel) from appearing at the hearing on confirmation of the Chapter 13 plan, as required by E.D.N.Y. LBR 3015-3, if (a) no objection has been filed by any creditor to the proposed Chapter 13 plan, (b) debtor's counsel will appear at the hearing, and (c) the Chapter 13 trustee consents. A request to be excused from appearing at the Chapter 13 confirmation hearing must be served upon the Chapter 13 trustee and filed with the Court no later than 5 business days prior to the scheduled confirmation hearing. Chapter 13 debtors who are not represented by counsel must personally appear at the confirmation hearing.

D. Adjournments.

1. **Motions.** Except as noted below, calendared matters may be adjourned by the moving party by calling the Courtroom Deputy provided that (i) all parties have been advised of and consent to the adjournment, (ii) the matter has not been previously adjourned more than 3 times, and (iii) the adjournment is requested no later than noon on the business day before the scheduled calendared event. An appearance is required whenever a party is unable to satisfy these requirements. No telephone requests for an adjournment will be accepted on the day of the hearing. Requests for adjournments of matters previously adjourned 3 or more times must be made on application to the Court and will be granted only upon a showing of good cause. All adjournments must be confirmed by the requesting party in writing to all affected parties, with a copy to the Court, immediately following the grant of the adjournment. *Failure to comply with this rule may result in the matter being marked off the calendar, in which event it may be restored for cause shown, upon written application to the Court on notice to all relevant parties.*
 - a. **Notice to all creditors.** A hearing on any motion or application, notice of which was given to all creditors, may not be adjourned without an appearance in Court on the first date for which it is scheduled.
 - b. **Objections to Claims (Chapter 13 cases).** A hearing on a motion to reduce, expunge or reclassify one or more claims in a Chapter 13 case cannot be adjourned to a date later than one week before the scheduled confirmation hearing without the consent of the Chapter 13 Trustee.
2. **Pre-Trial Conferences.** Pre-trial conferences may be adjourned upon the same showing required with respect to motions, with one exception: if a party has been served with the summons and complaint but has not filed an answer or response prior to the first pre-trial conference, it cannot be adjourned without an appearance in Court on the date of the scheduled conference.
3. **Trials.** Trials scheduled by the Court are for dates certain. No adjournments will be permitted except upon prior application, on notice to all parties in interest and to the Court, and only upon a showing of good cause.

II. PAPERS

A. Original Papers.

All original papers or disks required by the Order and the procedure rules for Electronic Case Filing (“ECF”) are to be presented to the Clerk’s Office located on the second floor of the building.

B. Chambers Copies.

Chambers copies of papers are required by E.D.N.Y. LBR 9004-1(b) and by the procedures rules of ECF. They may be left with the Clerk of the Court at the time of filing or mailed separately to the attention of Chambers. They must be clearly marked as “Chambers Copy,” and have on its face, in the upper right hand corner, the date and time of the proposed hearing to which it is applicable.

C. Conformed Copies.

Any party wishing to obtain a conformed copy of an order signed by the Honorable Dorothy Eisenberg must provide an extra copy of the proposed Order to be conformed, together with a self-addressed, stamped envelope, or may download it from the ECF case file.

III. MOTIONS.

A. Timing and Service in General.

Motions must be served and filed in accordance with E.D.N.Y. LBR 9006-1. Cross-motions must be served and filed so as to ensure actual receipt not later than three (3) days before the return date.

B. Amendment to Schedules.

1. **In General.** In accordance with E.D.N.Y. LBR 1009-1 and 4003-1, if applicable, no order is required to amend schedules.
2. **Adding Creditors in Chapter 7 Cases.** In the event that a debtor seeks to add creditors *after* the deadline imposed by FRBP 4004 and/or 4007 has lapsed, the amendment must recite the following language: “The amendments herein are without prejudice to the rights of the newly added creditor(s) as set forth in 11 U.S.C. Section 523(a)(3).”

C. Extensions of Time.

Requests or stipulations for extensions of time (e.g., to object to discharge or file schedules) must set forth (i) the date when such time would expire if the request were not approved, and (ii) whether any prior extensions were granted.

D. Objections to Claims.

Motions objecting to claims pursuant to 11 U.S.C. Section 502 and FRBP 3007 must include an affidavit or other evidentiary support in favor of the relief sought; a statement by a debtor or counsel is not sufficient. In the absence of evidentiary support being included with the moving papers, the court requires a witness (competent to testify with respect to the matters at issue) to be available at the scheduled hearing.

E. Relief from Automatic Stay.

Motions seeking relief from the automatic stay may be made by motion on notice or by notice of presentment, in the manner prescribed by E.D.N.Y. LBR 2002-1. Notice of the application must be in accordance with FRBP 4001(a): when made in a chapter 7 or 13 case, the debtor, debtor's attorney and case trustee must be served; when made in a chapter 11 case, the debtor, debtor's attorney, U.S. Trustee, all parties who filed notices of appearance, and the committee of unsecured creditors or, if none, the creditors included on the debtor's Rule 1007(d) list, must be served. In addition, when made by notice of presentment, the motion must also include (i) a copy of the proposed order, (ii) an affidavit or attorney's affirmation that sets forth the factual basis in support of the relief sought, and (iii) copies of the underlying mortgage documents and assignment, if applicable, and (iv) evidence showing the fair market value of the property.

F. Avoidance of Liens.

Motions seeking relief pursuant to 11 U.S.C. Section 522(f) must include one or more affidavits setting forth: (i) the date of filing of the bankruptcy petition, (ii) a description of the judgments to be avoided (e.g., name of judgment holder, date and place of docketing the judgment, amount of judgment), (iii) the amount of all other liens on the property (including mortgages as of the petition date), and (iv) the amount of the exemption claimed by the debtor(s). In addition, there must be evidentiary support showing the fair market value of the property as of the date of the filing of the bankruptcy petition; a statement by a debtor or counsel is not sufficient. Copies of relevant documents must be annexed as exhibits.

G. Proposed Orders.

In any chapter 7 or 13 case, proposed orders granting the relief requested by the motion to lift the automatic stay must include the following language: "The case trustee shall receive notice of any surplus monies that may exist after the sale."

H. Waiver of FRBP 4001(a)(3). Any request for a waiver of FRBP 4001(a)(3) must be accompanied by a separate affidavit explaining why this relief is required.

I. Rule 2004 Examinations. Requests for examination pursuant to FRBP 2004 may be made by motion on notice or by notice of presentment in the manner prescribed by E.D.N.Y. LBR 2002-1. Notice of the application must be served on the party to be examined, that party's counsel (if known), and the case trustee (if a chapter 7 or 13 case)

or the U.S. Trustee (if a chapter 11 case). *Ex parte* applications will not be entertained unless they are in compliance with E.D.N.Y. LBR 9077-1(b).

IV. ORDERS AND JUDGMENTS.

A. Proposed Orders and Counter-Orders.

Litigants are encouraged to include in their papers a proposed order or counter-order that reflects the relief sought. If the proposed order or counter-order is served upon the other parties involved in the controversy, and filed with the Court, the Court may, upon grant of the relief requested, sign the proposed order or counter-order following the hearing. The affidavit of service must confirm that service of the proposed order or counter-order was made as represented. Any party proposing a counter-order should also provide the Court with a black-lined copy that identifies all changes from the adverse party's proposed order.

B. Orders to Show Cause ("OSC").

OSCs will not be entertained unless there is compliance with E.D.N.Y. LBR 9077-1(a). In addition, the proponent must include an affidavit disclosing the date on which the proponent first became aware of the situation requiring relief by OSC and describing the proponent's efforts to inform opposing parties of the proposed OSC. As a general matter, before submitting a proposed OSC, the proponent should contact Chambers to schedule a time for the Court to consider the matter. Failure to do so may result in significant delay and the possible rejection of the documents.

- 1. Injunctions.** Parties seeking a temporary restraining order or other injunctive relief must comply with FRBP 7065 and 7001 as well as FRCP 65.
- 2. Need for Shortened or Limited Notice.** In lieu of proceeding by OSC, parties needing relief on shortened or limited notice should submit, to the Court, a proposed order providing for such relief and for service of the order and underlying motion upon all appropriate parties, together with the proponent's motion papers. Such an order will be signed only upon a showing by affidavit of good cause.

C. Judgments.

A proposed judgment for Judge Eisenberg's signature, in a separate legal back, must be served upon the appropriate party or parties and filed with the Clerk in connection with any proposed order that contemplates the entry of judgment. As required by FRBP 9021, the proposed judgment must be in a document separate from the proposed order granting the relief.

V. CONTESTED MATTERS.

A. In General.

E.D.N.Y. LBR 9014-1 applies to all contested matters pending before the Court.

B. Opposition.

Notwithstanding FRBP 9014 and E.D.N.Y. LBR 9006-1(b), a response to any motion in a contested matter is required pursuant to E.D.N.Y. LBR 7007-1(a) and 9014-1, and must be filed and served so as to be received no later than 3 days before the return date.

C. Evidentiary Hearings.

Unless the Court directs otherwise, the following procedures shall govern any evidentiary hearing in a contested matter:

1. Pre-Trial Statement. Parties to a contested matter must serve upon the other, and file with the Court, at least 7 days prior to the scheduled evidentiary hearing:

- a. Exhibits.** Two copies of each exhibit to be offered into evidence at the hearing (one set for the Court; the other for use by witnesses at the hearing). The exhibits should be pre-marked. If there are more than 15 exhibits, they should be tabbed or included in a binder for easy reference. As a general rule, the Court will not permit exhibits to be introduced at the hearing (except for purposes of cross-examination) in the absence of complying with this rule unless good cause is shown. If the parties stipulate to admissibility of the documents (without waiving objections as to relevancy) in advance of the hearing, the exhibits may be offered into evidence without the necessity of establishing a foundation at trial.
- b. Witnesses.** A list of the witnesses to be called at the evidentiary hearing.
- c. Memorandum.** A memorandum of law in support of the party's position.

2. Discovery.

In accordance with FRBP 9014, discovery is permitted in a contested matter. All discovery must be completed no later than 10 days prior to the scheduled evidentiary hearing.

VI. HEARINGS ON DISCLOSURE STATEMENT

A. Notice.

In addition to the parties identified in FRBP 3017(a), a proponent must serve copies of the proposed plan and disclosure statement, together with notice of the hearing, to the Internal Revenue Service and the New York State Department of Taxation & Finance, at the addresses set forth in E.D.N.Y. LBR 2002-2, in addition to the parties enumerated in FRBP 3017(a).

B. Amendment.

In the event that any proposed plan and/or disclosure statement is amended, the amending party must also file with the Court, at least 3 business days prior to the scheduled hearing, a black-lined copy of the amended paper, reflecting all changes from the prior version.

VII. PROPOSED CASH COLLATERAL AND FINANCING ORDERS

A. Motions. Except as provided in this section, all cash collateral and financing requests under 11 U.S.C. §§ 363 and 364 shall be heard by motion filed pursuant to FRBP 2002, 4001 and 9014 (“Financing Motions”).

- 1. Provisions to be Highlighted.** All Financing Motions must (i) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below, (ii) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement, and (iii) state the justification for the inclusion of such provision:
 - a.** Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the pre-petition secured creditors (*i.e.*, clauses that secure pre-petition debt by post-petition assets in which the secured creditor would not otherwise have a security interest by virtue of its pre-petition security agreement or applicable law);
 - b.** Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, priority, perfection or amount of the secured creditor’s pre-petition lien or debt, or the waiver or release of claims against the secured creditor or any other party (including avoiding-power causes of action), without first giving parties-in-interest at least 75 days from the entry of the order and the creditors’ committee, if formed, at least 60 days from the date of its formation to investigate such matters;
 - c.** Provisions that seek to waive whatever rights the estate may have under 11 U.S.C. § 506(c);

- d. Provisions that grant to the pre-petition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548 and 549;
- e. Provisions that deem pre-petition debt to be post-petition debt or that use post-petition loans from a pre-petition secured creditor to pay part or all of the secured creditor's pre-petition debt;
- f. Provisions that do not provide any carve-out for professional fees, or that provide treatment for the professionals retained by a creditors' committee different from that provided for the professionals retained by the debtor with respect to a professional fee carve-out;
- g. Provisions that prime any secured lien, without the consent of that lienor, or that waive the estate's right to seek to prime any lien under § 364(d) of the Bankruptcy Code;
- h. Provisions that purport to grant automatic relief from the automatic stay, without notice, application or order of the Court, upon the occurrence of an event of default, including conversion to Chapter 7, the appointment of an examiner or the appointment of an operating trustee;
- i. Provisions that require the debtor to pay the secured creditor's expenses and attorneys' fees in connection with the proposed financing or use of cash collateral, without any notice or review by the Office of the United States Trustee, creditors' committee (if formed) or the Court; or
- j. Provisions that exclude from a carve-out any request for professional fees related to the investigation of whether the secured creditor's lien is valid and/or properly perfected.

2. **Summary.** All Financing Motions shall also provide a summary of the essential terms of the proposed use of cash collateral and/or financing (*e.g.*, the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations, and protections afforded under 11 U.S.C. §§ 363 and 364).

B. Interim Relief. When Financing Motions are filed with the Court on or shortly after the date of entry of the order for relief, the Court may grant interim relief on shortened notice. Such interim relief is intended to avoid immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the Court will not approve *ex parte* interim financing orders that include any of the provisions listed above in subsection A.1.(a)-(j), inclusive, of this Rule; upon a proper showing at the interim hearing, after notice to the creditors and parties in interest, the secured creditor may seek such relief *nunc pro tunc*.

VIII. HEARINGS ON CONFIRMATION.

At least 2 days prior to the proposed hearing on confirmation, the Debtor shall file with the Court the original affidavits and ballots received on the proposed plan, and the Debtor shall file with the Court and the Office of the United States Trustee a statement as to (a) whether the Debtor proposes to confirm the plan pursuant to 11 U.S.C. Section 1129(b); and (b) any witnesses in favor of the plan ***other than*** the Debtor who will testify as to any facts relevant to confirmation. The Court requires testimony by the Debtor on behalf of the plan.